IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

WEDNESDAY, THE 28TH FEBRUARY 2007 / 9TH PHALGUNA 1928

OP.No. 6601 of 2001(J)

PETITIONER:

MANAGER,
SREE KUMARAMANGALAM HIGHER SECONDARY SCHOOL,
KUMARAKOM,
KOTTAYAM 686 563.

BY ADV. SRI.G.S.MOHANDAS
SRI.M.SALIM
SRI.S.BALAN PILLAI

RESPONDENTS:
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1. **DIRECTOR OF PUBLIC INSTRUCTION,**
   THIRUVANANTHAPURAM 695 014.

2. **DISTRICT EDUCATIONAL OFFICER,**
   KOTTAYAM.

3. **SMT.SHEEBA S.**
   KANAPPALLY VEETTIL,
   PALLICHIRA,
   KUMARAKOM,
   KOTTAYAM.

4. **KUMARI SHEEBA R.,**
   SEWING TEACHER,
   SREE KUMARAMANGALAM HIGHER SECONDARY SCHOOL,
   KUMARAKOM,
   KOTTAYAM 686 563.

BY ADV. SRI.B.RAGUNATHAN FOR R4
SRI.V.V.MATHEW
SRI.M.NARENDRA KUMAR FOR R3
GOVERNMENT PLEADER SRI.SANDESH RAJA

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 28/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP NO.6601/2001

CMP NO.10901 OF 2001 IN OP NO.6601 OF 2001

DISMISSED

28/02/2007 **SD/-**
ANTONY DOMINIC, JUDGE

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1: TRUE COPY OF THE ORDER OF APPOINTMENT DATED 13.1.99 TO THE 4TH RESPONDENT.

EXT.P2: TRUE COPY OF ORDER DATED 10.7.1998 IN CMP NO.19687 OF 1997 IN OP NO.11087 OF 1997 T.

EXT.P3: TRUE COPY OF ORDER NO.0001/SKM/98/X DATED 29.7.98 ISSUED BY THE PETITIONER.

EXT.P4: TRUE COPY OF ORDER NO.B2-5950/97 DATED 23.12.1998 OF THE 2ND RESPONDENT.

EXT.P5: TRUE COPY OF ORDER NO.966/99/L.DIS.DATED 6.3.99 OF THE 2ND RESPONDENT.

EXT.P6: TRUE COPY OF THE REVISION PETITION FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT DATED 12.1.2000.

EXT.P7: TRUE COPY OF THE COMMON JUDGMENT DATED 29.3.2000 IN OP NO.11087 OF 1997 T AND OP NO.7961 OF 2000-W.

EXT.P8: TRUE COPY OF ORDER NO.ET3/12039/99/K.DIS/DPI DATED 16.8.2000 OF THE 1ST RESPONDENT.

EXT.P9: TRUE COPY OF THE APPOINTMENT ORDER DATED 18.5.2001.

EXT.P10: TRUE COPY OF THE POSTAL ACKNOWLEDGEMENT.

EXT.P11: TRUE COPY OF THE APPOINTMENT ORDER DT.28.5.2001.

EXT.P12: TRUE COPY OF THE POSTAL RECEIPT.

EXHIBITS OF R3

EXT.R3(a): A COPY OF THE CERTIFICATE ISSUED BY THE BOARD OF TECHNICAL EXAMINATION.

//TRUE COPY//

ANTONY DOMINIC, J.

O.P NO. 6601 OF 2001

Dated this the 28th day of February, 2007

J U D G M E N T

The facts of the case disclose that a post of Sewing Teacher was sanctioned on 22/5/98 and staking claim to that post, being a claimant under Rule 51 B of Chapter XIV A K.E.R, the 3rd respondent filed a case before this Court as O.P.No. 11087/97. In that case, this Court by Ext.P2 order dated 10/7/98 directed the Manager to consider her claim and in pursuance to the order thus issued by this court, the Manager passed Ext.P3 order holding that the 3rd respondent was not entitled to be appointed to the post of Sewing Teacher sanctioned by order dated 22/5/98. It was thereafter that, by Ext.P1, the 4th respondent was appointed as Sewing Teacher effective from 13/1/99.

2. Following the appointment of the 4th respondent, request for approval was made to the D.E.O and the same is seen rejected by Ext.P5 order dated 6/3/99 and the reason stated is "there is a claimant qualified for the post under Rule 51 B Chapter XIV A K.E.R". Manager pursued the matter in revision before the first respondent by Ext.P6. During the pendency of the revision,

he filed OP 7961/2000, which was disposed of by Ext.P7 judgment, directing the first respondent to consider and pass orders on Ext.P6 revision. It was accordingly that Ext.P8 order dated 16/8/2000 was issued by the first respondent rejecting the revision and upholding Exhibit P5 order of the D.E.O declining to approve the appointment of the 4th respondent. In the above background this original petition was filed by the Manager seeking the reliefs of quashing the order declining approval and the order of the first respondent rejecting the revision.

3. The only contention raised during the course of the hearing is that while the 4th respondent was qualified in terms of Rule 2(3)(d) of Chapter XXX1 of K.E.R, the 3rd respondent was not qualified and therefore the appointment of the 4th respondent is valid. To resolve the controversy, it is necessary to refer to the Rule and the qualification as prescribed in Rule 2(3)(d) of Chapter XXXI of K.E.R is as follows:

> "(d) Sewing Teachers: (1) A pass in S.S.L.C. Examination conducted by the Commissioner for Government Examinations, Kerala, or its equivalent; and
> (2) Group Certificate in Needle Work and Dress Making of the K.G.T.E (Higher) or M.G.T.E.(Higher); or

> Group Certificate in Tailoring of the K.G.T.E.(Higher) or M.G.T.E.(Higher); or
>
> (Group Diploma in crafts issued by the Commissioner for Government Examinations, Kerala; or National Trade Certificate in Cutting and Tailoring issued by the National Council for training in Vocational Trades, Government of India or Diploma in Craftsmanship (Tailoring and Garments making) issued by the Director of Technical Education, Kerala)."

4. While it is the admitted position that the 4th respondent is qualified in terms of the aforesaid rule, the qualification possessed by the 3rd respondent as disclosed by her counter affidavit is that she has passed with second class, the Kerala Government Technical Examination in Tailoring, Embroidery and Needle Work (Higher). Exhibit R3(a) is the certificate issued by the Department of Technical Education, Government of Kerala in this respect. Thus, it is obvious that the 3rd respondent does not possess the qualification as prescribed in the rule. However, the impugned order shows that from 1987/88 onwards a two year composite course in Tailoring, Embroidery and Needle Work is implemented in the State replacing the old certificate scheme prescribed in Rule 2(3)(d) of Chapter XXXI of K.E.R. It is stated that as per GO(Ms) 187/87/H.Edn dated

27/6/87, pass in the new KGTE (Ten) Higher is equivalent to the group certificate issued in these subjects and is sufficient qualification for the post of Sewing Teacher in High School.

Thus the attempt is to contend that the qualification possessed by the 3rd respondent evidenced by Exhibit R3(a) is equivalent to what is prescribed in the Rule. I am not in a position to appreciate this argument for the simple reason that if the Government wanted to equate a qualification or to make it a part of the qualification prescribed in the statutory rules, what it ought to have done was to have incorporated the same in the Rule. Rule making authority is not conferred with any power to modify the rules by issuance of Government orders. Referring to Section 10 of the Kerala Education Act, 1958, the learned Government Pleader raised a contention that in as much as the Government has the competence to prescribe the qualification of teachers, the Government is equally competent to modify the same by executive orders. If this plea is to be accepted, one has to forget the fact that statutory rule can be amended only in the manner in which law permits and executive orders cannot modify

such rules. Only such rules that are framed as per Section 36, in the manner laid down in Section 37 can amend the KER 1959. Therefore for reasons which are obvious, Exhibit R3(a), qualification possessed by the 3rd respondent, is not recognised by Rule 2(3)(d) of Chapter XXXI of K.E.R. The 3rd respondent therefore is unqualified to be appointed as Sewing Teacher and the appointment of the 4th respondent to that post cannot be held to be invalid for any reason.

5. Thus the rejection of the approval of the appointment of the 4th respondent and the rejection of the revision petition filed by the first respondent cannot be sustained. Thus Exhibits P4, P5 and P8 are therefore quashed and the 2nd respondent is directed to approve the appointment of the 4th respondent as Sewing Teacher with effect from 13/1/99, the date of her initial appointment in the school.

Original petition is disposed of as above. No costs.

ANTONY DOMINIC, JUDGE

Rp